

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**



Ex parte GUNTHER SILBERBAUER

Appeal No. 2006-0377
Application No. 10/066,085

ON BRIEF

Before FRANKFORT, CRAWFORD and BAHR, Administrative Patent Judges.
CRAWFORD, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1, 3 and 4. Claim 2 is objected to.

The appellant's invention relates to a device for collecting printed sheets in a certain sequence astride and atop one another to form a printed product (specification, p. 1). A copy of the claims under appeal is set forth in the appendix to the appellant's brief.

THE PRIOR ART

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Osako et al. (Osaka)	5,678,813	Oct. 21, 1997
Müller	6,315,107	Nov. 13, 2001

THE REJECTIONS

Claims 1 and 4 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Müller.

Claim 1 stands rejected under 35 U.S.C. § 102(b) as being anticipated by Osako.

Claims 1, 3 and 4 stand rejected under 35 U.S.C. § 103 as being unpatentable over Müller.

Claims 1 and 3 stand rejected under 35 U.S.C. § 103 as being unpatentable over Osako.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the answer (mailed May 9, 2005) for the examiner's complete reasoning in support of the rejections, and to the brief (filed January 31, 2005) and reply brief (filed July 11, 2005) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

We turn first to the examiner's rejection of claims 1 and 4 under 35 U.S.C. § 102(e) as being anticipated by Müller. We initially note that to support a rejection of a claim under 35 U.S.C. § 102, it must be shown that each element of the claim is found, either expressly described or under principles of inherency, in a single prior art reference. See Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

The examiner's findings regarding this rejection can be found on pages 3 and 4 of the answer.

The appellant argues that Müller does not describe a saddle-shaped support disposed above a conveying device. In appellant's view, the chain 2 of Muller, which

the examiner finds to be a saddle-shaped support, is disposed behind the chain 3, which the examiner finds is a conveying device for transporting the printed products to a further processing step.

We do not find this argument persuasive because we agree with the examiner that:

. . . the upper surface of the chain 2 is above the upper surface of the chain 3 for at least a portion of their overlapping area. Specifically, the upper surface of the chain 2 is slightly above the surface of the chain 3 at least the line II-II as seen in Fig. 1 of Mueller. This meets the limitation of the claim 1 that the saddle shaped support formed by the chain 2 be above the conveying device formed by the chain 2 [sic:3] because the language of the claims does not require the entire saddle shaped support to be above the conveying device 3, but only requires a portion of the saddle shaped support to be above the conveying device [answer at pages 5 to 6].

The appellant also argues that Müller does not describe a saddle-shaped support that comprises a circulating traction mechanism or driving members connected to the circulating traction mechanism.

We do not find these arguments persuasive because we agree with the examiner that:

. . . the members 5 clearly form driving members connected to the circulating traction mechanism 2 that act on the printed products to convey them in a direction parallel to a conveying direction of the conveying device 3 as required by the present invention [answer at page 6].

In view of the foregoing, we will sustain this rejection as it is directed to claim 1. We will also sustain this rejection as it is directed to claim 4 because the appellant has not argued the separate patentability of this claim. See In re Nielson, 816 F.2d 1567, 1572, 2 USPQ2d 1525, 1528 (Fed. Cir. 1987).

We turn next to the examiner's rejection of claim 1 under 35 U.S.C. § 102(b) as being anticipated by Osako.

The examiner 's findings in regard to this rejection can be found on page 4 of the answer.

The appellant argues that Osako does not describe a saddle-shaped support disposed above a conveying device.

We agree with the examiner that Figure 8 of Osako depicts:

. . . the saddle shaped support formed by the first conveyor 111 that is configured to be supplied by a sheet feeder with printed sheets (because it could receive sheets from the feeder 114 or any other feeder in a certain sequence astride and atop one another) is clearly above the conveying device 117 in the fashion of the present application [answer at page 7].

In addition we do not find the appellant's argument that Osako does not describe a circulation traction mechanism and driving members acting on the printed products to convey the printed products in a direction parallel to the conveying direction to be persuasive.

In our view, the conveyor 111 is a circulating traction mechanism and pushers 112 are driving members that convey the printed products in a direction parallel to a conveying direction of the conveying device.

In view of the foregoing, we will sustain this rejection.

We turn next to the examiner's rejection of claims 1, 3 and 4 under 35 U.S.C. § 103 as being unpatentable over Müller.

We have addressed the readability of claims 1 and 4 on Muller above. In regard to the recitation in claim 3 of the saddle-shaped support being connected fixedly to the device frame, the examiner states:

While, no device frame is disclosed it is clear that both the forward and rear ends of the saddle-shaped support must be fixedly supported by some structure. It would have been obvious to one or[f] ordinary skill in the art at the time of the invention to fixedly attach the rear end of the saddle-shaped support to a device frame [answer at page 4].

We will sustain this rejection. Appellant argues that Müller does not disclose or suggest that the saddle-shaped support is connected fixedly to the device frame. We agree with the examiner that it would have been obvious to fixedly connect the saddle-shaped support to the device frame because the saddle-shaped support must be connected to some support. In addition, neither of claims 1 or 4 recite that the saddle-shaped support is fixedly connected to the device frame.

In view of the foregoing, we will sustain this rejection.

We turn lastly to the examiner's rejection of claims 1 and 3 under 35 U.S.C.

§ 103 as being unpatentable over Osako.

As in the preceding rejection, the examiner recognizes that Osako does not explicitly describe that the saddle-shaped support is fixedly connected to the device frame, but nonetheless finds that it would have been obvious to fixedly connect the saddle-shaped support to the device frame (answer at page 5).

We will sustain this rejection. Appellant argues that Osako does not disclose or suggest that the saddle-shaped support is connected fixedly to the device frame. We agree with the examiner that it would have been obvious to fixedly connect the saddle-shaped support to the device frame because the saddle-shaped support must be connected to some support. In addition, claim 1 does not recite that the saddle-shaped support is fixedly connected to the device frame.

The decision of the examiner affirmed.

AFFIRMED

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